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principal geographic unit of the agency (e.g., Regional Administrators of EPA).

(b) All reports required by permits, and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,

(3) The written authorization is submitted to the Director.

(c) *Changes to authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false informa-

tion, including the possibility of fine and imprisonment for knowing violations.

(Clean Water Act (33 U.S.C. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*))

[48 FR 14153, Apr. 1, 1983, as amended at 48 FR 39619, Sept. 1, 1983; 49 FR 38047, Sept. 29, 1984; 50 FR 6941, Feb. 19, 1985; 55 FR 48063, Nov. 16, 1990; 65 FR 30907, May 15, 2000]

§ 122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).

(a) *Scope.* Concentrated animal feeding operations (CAFOs), as defined in paragraph (b) of this section or designated in accordance with paragraph (c) of this section, are point sources, subject to NPDES permitting requirements as provided in this section. Once an animal feeding operation is defined as a CAFO for at least one type of animal, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

(b) Definitions applicable to this section:

(1) *Animal feeding operation* ("AFO") means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(2) *Concentrated animal feeding operation* ("CAFO") means an AFO that is defined as a Large CAFO or as a Medium CAFO by the terms of this paragraph, or that is designated as a CAFO in accordance with paragraph (c) of this section. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

(3) The term *land application area* means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter or process wastewater from the production area is or may be applied.

(4) *Large concentrated animal feeding operation* (“Large CAFO”). An AFO is defined as a Large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:

- (i) 700 mature dairy cows, whether milked or dry;
- (ii) 1,000 veal calves;
- (iii) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
- (iv) 2,500 swine each weighing 55 pounds or more;
- (v) 10,000 swine each weighing less than 55 pounds;
- (vi) 500 horses;
- (vii) 10,000 sheep or lambs;
- (viii) 55,000 turkeys;
- (ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (x) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- (xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- (xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or
- (xiii) 5,000 ducks (if the AFO uses a liquid manure handling system).

(5) The term *manure* is defined to include manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

(6) *Medium concentrated animal feeding operation* (“Medium CAFO”). The term Medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges listed in paragraph (b)(6)(i) of this section and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

- (i) The type and number of animals that it stables or confines falls within any of the following ranges:

(A) 200 to 699 mature dairy cows, whether milked or dry;

(B) 300 to 999 veal calves;

(C) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;

(D) 750 to 2,499 swine each weighing 55 pounds or more;

(E) 3,000 to 9,999 swine each weighing less than 55 pounds;

(F) 150 to 499 horses;

(G) 3,000 to 9,999 sheep or lambs;

(H) 16,500 to 54,999 turkeys;

(I) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(J) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(K) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(L) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or

(M) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and

(ii) Either one of the following conditions are met:

(A) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

(B) Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(7) *Process wastewater* means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

(8) *Production area* means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

(9) *Small concentrated animal feeding operation* ("Small CAFO"). An AFO that is designated as a CAFO and is not a Medium CAFO.

(c) *How may an AFO be designated as a CAFO?* The appropriate authority (i.e., State Director or Regional Administrator, or both, as specified in paragraph (c)(1) of this section) may designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to waters of the United States.

(1) *Who may designate?*—(i) *Approved States.* In States that are approved or authorized by EPA under Part 123, CAFO designations may be made by the State Director. The Regional Administrator may also designate CAFOs in approved States, but only where the Regional Administrator has determined that one or more pollutants in the AFO's discharge contributes to an impairment in a downstream or adjacent State or Indian country water that is impaired for that pollutant.

(ii) *States with no approved program.* The Regional Administrator may designate CAFOs in States that do not have an approved program and in In-

dian country where no entity has expressly demonstrated authority and has been expressly authorized by EPA to implement the NPDES program.

(2) In making this designation, the State Director or the Regional Administrator shall consider the following factors:

(i) The size of the AFO and the amount of wastes reaching waters of the United States;

(ii) The location of the AFO relative to waters of the United States;

(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters of the United States; and

(v) Other relevant factors.

(3) No AFO shall be designated under this paragraph unless the State Director or the Regional Administrator has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program. In addition, no AFO with numbers of animals below those established in paragraph (b)(6) of this section may be designated as a CAFO unless:

(i) Pollutants are discharged into waters of the United States through a manmade ditch, flushing system, or other similar manmade device; or

(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(d) *NPDES permit authorization*—(1) *Permit Requirement.* A CAFO must not discharge unless the discharge is authorized by an NPDES permit. In order to obtain authorization under an NPDES permit, the CAFO owner or operator must either apply for an individual NPDES permit or submit a notice of intent for coverage under an NPDES general permit.

(2) *Information to submit with permit application or notice of intent.* An application for an individual permit must include the information specified in

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(3) *Information to submit with permit application.* A permit application for an individual permit must include the information specified in § 122.21. A notice of intent for a general permit must include the information specified in §§ 122.21 and 122.28.

(e) *Land application discharges from a CAFO are subject to NPDES requirements.* The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14). For purposes of this paragraph, where the manure, litter or process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as specified in § 122.42(e)(1)(vi)–(ix), a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural stormwater discharge.

(1) For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall be considered an agricultural stormwater discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in § 122.42(e)(1)(vi) through (ix).

(2) Unpermitted Large CAFOs must maintain documentation specified in § 122.42(e)(1)(ix) either on site or at a nearby office, or otherwise make such documentation readily available to the Director or Regional Administrator upon request.

(f) *By when must the owner or operator of a CAFO have an NPDES permit if it*

discharges? A CAFO must be covered by a permit at the time that it discharges.

(g) [Reserved]

(h) *Procedures for CAFOs seeking coverage under a general permit.* (1) CAFO owners or operators must submit a notice of intent when seeking authorization to discharge under a general permit in accordance with § 122.28(b). The Director must review notices of intent submitted by CAFO owners or operators to ensure that the notice of intent includes the information required by § 122.21(i)(1), including a nutrient management plan that meets the requirements of § 122.42(e) and applicable effluent limitations and standards, including those specified in 40 CFR part 412. When additional information is necessary to complete the notice of intent or clarify, modify, or supplement previously submitted material, the Director may request such information from the owner or operator. If the Director makes a preliminary determination that the notice of intent meets the requirements of §§ 122.21(i)(1) and 122.42(e), the Director must notify the public of the Director's proposal to grant coverage under the permit to the CAFO and make available for public review and comment the notice of intent submitted by the CAFO, including the CAFO's nutrient management plan, and the draft terms of the nutrient management plan to be incorporated into the permit. The process for submitting public comments and hearing requests, and the hearing process if a request for a hearing is granted, must follow the procedures applicable to draft permits set forth in 40 CFR 124.11 through 124.13. The Director may establish, either by regulation or in the general permit, an appropriate period of time for the public to comment and request a hearing that differs from the time period specified in 40 CFR 124.10. The Director must respond to significant comments received during the comment period, as provided in 40 CFR 124.17, and, if necessary, require the CAFO owner or operator to revise the nutrient management plan in order to be granted permit coverage. When the Director authorizes coverage for the CAFO owner or operator under the general permit, the terms of the nutrient

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management plan shall become incorporated as terms and conditions of the permit for the CAFO. The Director shall notify the CAFO owner or operator and inform the public that coverage has been authorized and of the terms of the nutrient management plan incorporated as terms and conditions of the permit applicable to the CAFO.

(2) *For EPA-issued permits only.* The Regional Administrator shall notify each person who has submitted written comments on the proposal to grant coverage and the draft terms of the nutrient management plan or requested notice of the final permit decision. Such notification shall include notice that coverage has been authorized and of the terms of the nutrient management plan incorporated as terms and conditions of the permit applicable to the CAFO.

(3) Nothing in this paragraph (h) shall affect the authority of the Director to require an individual permit under § 122.28(b)(3).

[68 FR 7265, Feb. 12, 2003, as amended at 71 FR 6984, Feb. 10, 2006; 72 FR 40250, July 24, 2007; 73 FR 70480, Nov. 20, 2008; 77 FR 44497, July 30, 2012]

§ 122.24 Concentrated aquatic animal production facilities (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the NPDES permit program.

(b) *Definition.* *Concentrated aquatic animal production facility* means a hatchery, fish farm, or other facility which meets the criteria in appendix C of this part, or which the Director designates under paragraph (c) of this section.

(c) *Case-by-case designation of concentrated aquatic animal production facilities.* (1) The Director may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the United States. In making this designation the Director shall consider the following factors:

(i) The location and quality of the receiving waters of the United States;

(ii) The holding, feeding, and production capacities of the facility;

(iii) The quantity and nature of the pollutants reaching waters of the United States; and

(iv) Other relevant factors.

(2) A permit application shall not be required from a concentrated aquatic animal production facility designated under this paragraph until the Director has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

[48 FR 14153, Apr. 1, 1983, as amended at 65 FR 30907, May 15, 2000]

§ 122.25 Aquaculture projects (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Discharges into aquaculture projects, as defined in this section, are subject to the NPDES permit program through section 318 of CWA, and in accordance with 40 CFR part 125, subpart B.

(b) *Definitions.* (1) *Aquaculture project* means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(2) *Designated project area* means the portions of the waters of the United States within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* (1) Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except: